THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 15952 of 2005

Between:

M/s. Raghavendra Prestress Products Pvt. Ltd., Rep. by its Executive Director Sri Sanjeev A. Patil, S/o.Patil

..... PETITIONER

AND

1 South Central Railways, Rep. by its Financial Adviser and Chief Accounts Officer, Works Stores & Traffic Accounts Office
Accounts Building Secunderabad.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 15952 of 2005

ORAL ORDER: (Per Sri BRSR,J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the impugned action of the 1st respondent – South Central Railways in recovering the sales tax already paid by the petitioner to the 2nd respondent and further attempts to recover Rs.74,98,420/- from the running bills as arbitrary, illegal and capricious. The petitioner accordingly prays for grant of appropriate consequential directions.

The petitioner became the successful bidder for supply of railway sleepers to the

South Central Railways, the 1st respondent herein and was accordingly awarded the work of supply of sleepers subject to the terms and conditions set out in the contract with which we are not concerned for the present in this writ petition. The controversy relates to the recovery of sales tax component relatable to the period anterior to 2001.

The contention of the petitioner is that the sales tax liable to be paid has already been paid by the petitioner to the 1st respondent and therefore the question of deducting any further amounts from out of the bills payable to the petitioner towards the sales tax does not arise. The 2nd respondent has no authority in law to make any such deductions from out of the running bills that are payable to the petitioner.

The case of the Railways is that the Railways are obliged to pay to the seller only a sum of Rs.504/- as retention price in respect of each unit of sleepers apart from reimbursing sales tax and excise duty as legally payable on completed sleepers at the time of delivery. It is only the sale value of the sleeper as mentioned in the relevant contract that is reckoning basis for determining the taxable turn over under Section 2(1)(s) read with Section 5 of the of the A.P. General Sales Tax Act, 1957(for short 'the Act'). The sum and substance of the plea taken by the Railways is that the value of the items supplied free of cost by the buyer for the purpose of incorporating in the saleable goods is not includable in the sale price. Therefore, the question of including the value of such items in the taxable turnover and levying sales tax thereon does not arise.

It is submitted that neither the petitioner is liable to pay any sales tax on the value of the free supplied items nor the Railways are required to reimburse the same to the petitioner.

It is submitted that the petitioner paid the sales tax and the same has been received by the 1st respondent on their own accord and therefore ultimately the railways cannot be made liable to pay the sales tax which is not liable to be paid by it.

The case on hand is no doubt is an unfortunate one. The petitioner itself is responsible for landing itself in quagmire since it has paid substantial amounts towards the sales tax, which is not liable to be paid either by the petitioner or by the railways. This legal position is not put in issue and it is now clear that the petitioner paid some amounts towards the sales tax on its own accord, which is not otherwise

payable. It is for that reason, learned counsel for the petitioner seeks leave of this Court to avail such remedies as may be available to it in law to recover the amounts already paid by the petitioner from the 2nd respondent. There cannot be any objection to grant such leave as prayed for and leave the remedies of the petitioner open. It shall be open to the petitioner to avail such remedies as may be available to it in law to seek refund/recovery of the amounts said to have been paid by it to the 2nd respondent towards the sales tax since the same was paid under mistaken impression. That if the petitioner avails any such remedies, the same may have to be considered on its own merits.

No relief much less any direction as prayed for against the 1st respondent railways could be granted in this writ petition. However, the remedies of the petitioner, if any available even as against the 1st respondent are also left open.

With the observations as above, the writ petition shall stand dismissed without any order as to costs.

(B.SUDERSHAN REDDY,J)

dated 05.10.2005

(S.ANANDA REDDY,J)

msv